



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 10**  
1200 Sixth Avenue  
Seattle, WA 98101

March 22, 2006

Reply to  
Attn Of: OW-135

David C. Peeler, Program Manager  
Washington Department of Ecology  
P. O. Box 47600  
Olympia, Washington 98504-7600

Re: Partial Disapproval of the 2003 Revisions to the Washington Water Quality Standards Regulations

Dear Mr. Peeler:

On January 12, 2005 the Environmental Protection Agency (EPA) approved portions of Washington's 2003 water quality standard revisions. EPA has now completed its review of specific aquatic life designated uses and associated temperature criteria of the State of Washington's July 2003 revised water quality standards (WAC 173-201A-600(1) and 602 and WAC 173-201 A-200(1)(c)). Based on this review and pursuant to Section 303(c) of the Clean Water Act (CWA) and its implementing regulations at 40 CFR 131.5 and 131.21, EPA is disapproving those provisions as they apply to specific waterbodies as detailed below and in the enclosures.

EPA found two fundamental deficiencies when reviewing these portions of the standards. First, Washington did not use the available fish distribution information when converting the designated uses from their former "class" system to their new "use-based" system. This resulted in new rules which did not appropriately designate uses for specific water body segments. Secondly, Washington recognized that the temperature criteria adopted for the "Salmon and trout spawning, core rearing, and migration," "Salmon and trout spawning, non-core rearing, and migration," and "Char" uses are not always protective of spawning (e.g., summer spawning). In order to address this, Washington adopted spawning criteria for salmon and char, however, the State did not identify where or when the spawning criteria needed to be applied.

After reviewing the available fish distribution information, EPA has determined that some streams have incorrect aquatic life use designations, and some streams have temperature criteria that are not protective of the appropriate fish uses in the streams. In light of this information, EPA is disapproving the following:

- Washington's designation of certain waters for "Salmon and trout spawning, non-core rearing, and migration" use and the associated 17.5°C temperature criterion because the record demonstrates that these waters should be designated as "Salmon and trout spawning, core rearing, and migration" use and have an associated 16°C temperature criterion;
- Washington's designation of certain waters for the "Salmon and trout spawning, core rearing, and migration" use and the "Salmon and trout spawning, non-core rearing, and migration" use and the associated 16°C and 17.5°C temperature criteria because the record demonstrates that these waters should be designated "Char" use with an associated 12°C criterion;
- Washington's designation of certain waters for the "Salmon and trout rearing and migration only" use because the record demonstrates that these waters should be designated as "Salmon and trout spawning, non-core rearing, and migration" use;
- Washington's application of the 16°C and 17.5°C temperature criteria associated with the "Salmon and trout spawning, core rearing, and migration" use and the "Salmon and trout spawning, non-core rearing, and migration" use for specific waters where and when the record demonstrates that 13°C is needed to protect salmon and steelhead spawning and incubation; and
- Washington's application of the 12°C temperature criterion associated with the "Char" use for specific waters where and when the record demonstrates that 9°C is needed to protect Char (bull trout) spawning and incubation.

The details of EPA's disapproval and specified changes to the Washington 2003 water quality standards, as well as the regulatory and scientific basis for its disapproval and specified changes, are contained in the enclosed "Basis for EPA's Partial Disapproval of Washington's 2003 Water Quality Standard Revisions" and its appendices. Additional scientific information is also contained in the administrative record for this decision.

EPA has been working closely with the State to resolve these issues. We understand that the State plans to proceed with rulemaking to remedy the problems identified above. EPA commends the State for its efforts to resolve these issues. We intend to continue working closely and cooperatively with the State during the coming months to support the State in its rulemaking process. This includes EPA's assistance, during the State's public process, in explaining its basis for the specified changes to the Washington water quality standards.

While EPA's recommendations are based on the best available scientific data and rationale regarding the fish uses that are occurring in the specified waters and the temperatures necessary to protect these species and their life stages, EPA acknowledges that there may be issues regarding the attainability of the numeric temperature criteria in some waters. EPA recognizes that waters may exceed water quality standards for

temperature for many different reasons, including natural conditions, and that the nature and complexity of the challenge associated with reducing temperatures to meet WQS varies across a spectrum of factors. For example, the effect of restoring riparian areas of a waterbody to increase the amount of shade and reduce the amount of direct sun impinging upon the water is well understood, whereas some modifications to dam operations to reduce water temperatures can be very difficult and complex and in some cases, may not be technologically, environmentally, and/or economically feasible.

EPA understands that flexibilities exist under the Washington water quality standards, the Clean Water Act and applicable guidance to address circumstances where there may be attainability issues. We are prepared to work with you, other federal and state agencies, and affected parties to explore and appropriately utilize the available options to ensure attainable water quality standards are established. Available options include: 1) invoking the State's natural background temperature provision where the natural background temperature is higher than the numeric temperature criteria, 2) use of the State's "Compliance Schedules for Dams" provision for waters affected by the existence and/or operation of dams, 3) use refinement and the development of alternative numeric criteria in conjunction with a use attainability analysis (UAA), 4) the development of alternative site-specific criteria, and 5) a potential hybrid of options 1-4. In the near term, EPA believes that Washington's "Compliance Schedules for Dams" provision provides a particularly useful mechanism in the near term to address compliance issues for waters affected by the existence and/or operation of dams, while also providing further opportunity to explore and utilize long term options to ensure attainable standards are established.

If you have any questions, please feel free to contact me at (206) 553-7151, or you may contact Kathleen Collins at (206) 553-2108 or John Palmer at (206) 553-6521.

Sincerely,

/s/

Mike Gearheard  
Director  
Office of Water and Watersheds

Enclosures

cc: Melissa Gildersleeve, Washington Department of Ecology  
Mark Hicks, Washington Department of Ecology  
Fran Wilshusen, Northwest Indian Fisheries Commission  
Kenneth Berg, USFWS  
Steven Landino, NOAA

Julie Carter, Columbia River Inter-Tribal Fish Commission  
Mark White, Chehalis Confederated Tribes  
John St. Pierre, Confederated Tribes of the Colville Reservation  
Mike Iyall, Cowlitz Indian Tribe  
Rodney Thysell, Hoh Tribe  
Ann Seiter, Jamestown S'Klallam Tribe  
Deane Osterman, Kalispel Tribe  
Carol Brown, Lower Elwha Klallam Tribe  
Merle Jefferson, Lummi Nation  
Vince Cooke, Makah Tribe  
Isabel Tinoco, Muckleshoot Tribe  
David Trout, Nisqually Tribe  
Bob Kelly Jr., Nooksack Tribe  
Sharon Purser, Port Gamble S'Klallam Tribe  
Bill Sullivan, Puyallup Tribe  
Mel Moon, Quileute Tribe  
Bruce Jones, Quinault Nation  
Christine Woodward, Samish Indian Nation  
James L. Joseph, Sauk-Suiattle Tribe  
Gary Burns, Shoalwater Bay Tribe  
Keith Dublanica, Skokomish Tribe  
Ian Kanair, Snoqualmie Tribe  
Rudy Peone, Spokane Tribe  
Jim Peters, Squaxin Island Tribe  
John Drotts, Stillaguamish Tribe  
Denise Williams, Suquamish Tribe  
Scott Andrews, Swinomish Tribe  
Terry Williams, Tulalip Tribes  
Scott Schuyler, Upper Skagit Tribe  
Carroll Palmer, Yakama Nation